



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

AS

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/315,688	05/20/99	SHANBROM	E 38786.00069

IM52/0914

STEFAN J. KIRCHANSKI  
CROSBY, HEAFY, ROACH & MAY  
1901 AVENUE OF THE STARS, SUITE 700  
LOS ANGELES CA 90067

EXAMINER

OLSEN, K

ART UNIT	PAPER NUMBER
1744	10

DATE MAILED: 09/14/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/315,688	SHANBROM, EDWARD
	Examiner	Art Unit
	Kaj Olsen	1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 June 2001.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 101***

In view of the applicant's response dated June 20<sup>th</sup> 2001 and the declaration of William John Owens, the examiner has withdrawn the previous 101 and 112 1<sup>st</sup> paragraph rejections.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (Chemical Sensors, vol. 15, pp. 295-297 (1995) in view of Coetzee (S. Afr. Tydskr, Chem., vol. 44, pp. 22-24 (1991)).

Chen discloses a method of determining the level of a dietary antioxidant (ascorbic acid) in a dietary material (a beverage) by exposing a liquid sample to iodine solution and measuring a change in concentration of iodide ions using a iodide-cyanide selective electrode (see translation of Chen provided with this office action). Chen did not disclose the use of a solution of iodine with an iodophor. However, Coetzee in an alternate analytical technique discloses that iodine complexed with iodophors such as polyvinylpyrrolidone is a preferable source of iodine due to its greater stability than that of iodine solutions (see first paragraph). It would have been obvious to one of ordinary skill in the art at the time the invention was being made to utilize an iodophor in order to stabilize the source of iodine.

***Response to Arguments***

Applicant's arguments filed June 20th have been fully considered but they are not persuasive. Applicant urges that Chen fails to disclose the measurement of other dietary antioxidants or a wide range of dietary antioxidants. However, the claims are currently drawn to the sensing of a broad subset of materials (antioxidants). In order for a reference to anticipate or render obvious the claimed invention, the examiner need only provide a single demonstration of a component of that broad subset. Ascorbic acid is a well known antioxidant and Chen thereby reads on the claimed invention. Moreover, applicant has not claimed "a wide <sup>range</sup> of dietary antioxidants" that would require Chen (or a tertiary reference) to set forth or render obvious additional antioxidant materials. Applicant's argument that Chen fails to teach the presence of an iodophor is irrelevant in view of the teaching of Coetzee.

Applicant also urges that there is no suggestion that iodine instability is a problem with the determination of ascorbic acid. Apparently, the purpose of this point is to call into question the examiner combination of references with respect to the iodophor. This is not persuasive. Motivation for the combination of references need not come from the primary reference, but can be found in any of the references or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Coetzee teaches that PVP-iodine solutions are more stable than iodine solutions. The PVP-iodine solutions would be more stable irrespective of how the various solutions are being utilized. One possessing ordinary skill in the art would be motivated to utilize a more stable form of iodine reagent for the determination of ascorbic acid in beverages because a stable reagent is easier to handle.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kaj Olsen whose telephone number is (703) 305-0506. The examiner can normally be reached on Monday through Thursday from 8:00 AM-5:30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Mr. Robert Warden, can be reached at (703) 308-2920.

When filing a fax in Group 1700, please indicate in the header "Official" for papers that are to be entered into the file, and "Unofficial" for draft documents and other communications with the PTO that are not for entry into the file of this application. This will expedite processing of your papers. The fax number for this Group is (703) 305-7719.

Art Unit: 1744

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist, whose telephone number is (703) 308-0661.

Kaj K. Olsen, Ph.D.



Patent Examiner

AU 1744



ROBERT J. WARDEN, SR.  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700